

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION**

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| LEROY LEE, JR., | : | |
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| Petitioner, | : | |
| | : | |
| v. | : | CASE NOS.: 6:07-CR-4 (WLS) |
| | : | 6:13-CV-90179 (WLS) |
| UNITED STATES OF AMERICA, | : | |
| | : | |
| Respondent. | : | |
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ORDER

Before the Court is a Recommendation from United States Magistrate Judge Thomas Q. Langstaff, which was filed on February 25, 2014, in this habeas action brought under 28 U.S.C. § 2255. (Doc. 49.) In the Recommendation, Judge Langstaff recommends that the Court deny Petitioner's Motion to Vacate, Set Aside, or Correct Sentence (Doc. 45) on the basis that such Motion is time-barred by the AEDPA. (Doc. 49 at 3.) Judge Langstaff also recommends denying Petitioner a certificate of appealability because he failed to make a substantial showing of the denial of a constitutional right. (*Id.* at 3-4.) Although Petitioner was provided with fourteen days to file an objection to Judge Langstaff's Recommendation, the time period to do so has lapsed and Petitioner has not filed an objection. (*See generally* Docket.)

In his Motion to Vacate, Petitioner asserted that his § 2255 petition was timely under 28 U.S.C. § 2255(f)(3) because *Alleyne v. United States*, 133 S. Ct. 2151 (2013), "rendered a new substantive change in law [and] is retroactively applicable" to Petitioner's case. (*Id.* at 2-3.) The Court agrees with Judge Langstaff's finding that "Alleyne's rule does not apply retroactively on collateral review." *See Chester v. Warden*, No. 12-15119, 2014 WL 104150, *4 (11th Cir. Jan. 13, 2014) (citations omitted). Because Petitioner does not identify any other basis for the Court to conclude that his petition is

timely, the Court finds that Petitioner's § 2255 petition is not timely and thus time-barred.

Upon full review and consideration of the record, the Court finds that Judge Langstaff's Recommendation (Doc. 49) should be, and hereby is, **ACCEPTED**, **ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein, together with the reasons stated and conclusions reached herein. Accordingly, Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 45) is **DENIED**. Also, because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is **DENIED**. *See* 28 U.S.C. § 2253(c)(2).

SO ORDERED, this 21st day of April 2014.

/s/ W. Louis Sands
W. LOUIS SANDS, JUDGE
UNITED STATES DISTRICT COURT